

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

RE/MAX International, Inc.,)
Plaintiff,)
v.)
TREND SETTER REALTY, LLC,)
a Texas limited liability company;)
PAVNOUTY ABRAHAM, an individual;)
and)
DEBORAH N. MILLER, an individual)
Defendants.)

**DECLARATION OF ADAM LINDQUIST SCOVILLE IN SUPPORT OF
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, ADAM LINDQUIST SCOVILLE, declare as follows:

1. I am a Senior Counsel for RE/MAX International, Inc. ("RE/MAX"). I submit this Declaration in support of RE/MAX's Motion for Partial Summary Judgment in the above-captioned action. I have personal knowledge of the facts recited below, and if called upon to testify concerning these facts under oath, I could and would do so competently.

2. RE/MAX is the owner of U.S. Trademark Registration No. 1,702,048 for the service mark comprising the red-over-white-over-blue sign design. RE/MAX owns several additional U.S. trademark registrations for a family of marks that include the red-

over-white-over-blue design or the horizontal bar design together with other words and/or other design elements, including, but not limited to U.S. Trademark Registration Nos. 1,691,854 and 1,720,592. True and correct copies of the registration certificates for these marks are attached as **Exhibit A** to the Brief in Support of Plaintiff's Motion for Partial Summary Judgment.

3. RE/MAX's U.S. Trademark Registration Nos. 1,702,048; 1,691,854; and 1,720,592 have achieved incontestability under 15 U.S.C. § 1065.

4. RE/MAX also owns Texas State Trademark Registration No. 55729, which is registered for the mark comprising a red, white, and blue rectangular bar design. A true and correct copy of the registration certificate for this mark is attached as **Exhibit B** to the Brief in Support of Plaintiff's Motion for Partial Summary Judgment.

5. Where appropriate below, I refer to the federal registration rights, state law rights and common law rights of RE/MAX in the red-over-white-over-blue mark, as described above, as the "RE/MAX Trademark."

6. Throughout the United States, a network of licensed RE/MAX franchisees and their affiliated independent contractor/sales associates are authorized to use the RE/MAX Trademark in connection with providing real estate brokerage services (the "RE/MAX Network").

7. Since at least as early as January 1, 1974, those affiliated with the RE/MAX Network have provided real estate brokerage services in interstate commerce in the United States in connection with the RE/MAX Trademark.

8. The RE/MAX Trademark is used on a variety of advertising media including yard signs, business cards, Internet web sites, directional signs, open house

signs, hot and cold air balloons, television commercials, billboards, bus stop benches, banners, and other advertising and promotional items.

9. Since 1973, RE/MAX estimates that it and the RE/MAX Network have invested billions of dollars to develop, promote and maintain the RE/MAX Trademark, among other trademarks owned by RE/MAX, in the United States and worldwide.

10. Brokers and associates in the RE/MAX Network have used the RE/MAX Trademark in connection with representing either the buyer or the seller over 20 million times in real estate sale transactions in the United States and worldwide, resulting in over two and a half trillion dollars in sales volume from 1973 to present date.

11. At any given time there are over 400,000 RE/MAX property listings in the United States, all but a small percentage of which generally display prominently a yard sign that includes the RE/MAX Trademark.

12. The RE/MAX Network has had continuous presence in the greater Houston area since at least 1979 and San Antonio area since at least 1984. Since then, and continuing until the present, RE/MAX and its affiliates have used the RE/MAX Trademark to advertise and promote their real estate brokerage services in the greater Houston and San Antonio areas.

13. The yard sign depicted below is an example of use of the RE/MAX Trademark in connection with providing real estate brokerage services by the RE/MAX Network:



14. Attached as **Exhibit D** to the Brief in Support of Plaintiff's Motion for Partial Summary Judgment is a true and correct copy of the Independent Contractor Agreement ("ICA") between Debbie Miller and Texan Elite Group, Inc., d/b/a RE/MAX Elite, an independently owned and operated RE/MAX franchise.

15. RE/MAX Elite has assigned to RE/MAX all of its rights under the ICA, including the right to pursue legal action and to pursue all available remedies for breach of paragraph 12 of the ICA. Attached as **Exhibit H** to the Brief in Support of Plaintiff's Motion for Partial Summary Judgment is a true and correct copy of the Assignment between RE/MAX Elite and RE/MAX.

I declare under penalty of perjury under the laws of the United States and the
State of Colorado that the foregoing is true and correct.

Executed on February 23rd, 2009.

By:



Adam Lindquist Scoville